

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

CLAYTON E. CARROLL,

Plaintiff,

v.

CIVIL ACTION NO. 1:13-29389

DENNIS DINGUS, Warden,  
McDowell County Correctional Center,

Defendant.

**MEMORANDUM OPINION AND ORDER**

By Standing Order, this action was referred to United States Magistrate Judge Dwane L. Tinsley for submission of findings and recommendations regarding disposition pursuant to 28 U.S.C.A. § 636(b)(1)(B). Magistrate Judge Tinsley submitted to the court his Findings and Recommendation on August 5, 2015, in which he recommended that the District Court grant respondent's corrected motion to dismiss, deny plaintiff's motion for default judgment, deny plaintiff's petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 without prejudice for failure to exhaust state remedies, deny as moot petitioner's application to proceed without prepayment of fees and costs, and dismiss this matter from the court's docket.

In accordance with the provisions of 28 U.S.C.A. § 636(b), the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge Tinsley's Findings and Recommendation. The failure of any party to file

such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's Findings and Recommendation within the seventeen-day period. Having reviewed the Findings and Recommendation filed by Magistrate Judge Tinsley, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby **GRANTS** respondent's corrected motion to dismiss, **DENIES** plaintiff's motion for default judgment, **DENIES** plaintiff's petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254 without prejudice for failure to exhaust state remedies, **DENIES** as moot petitioner's application to proceed without prepayment of fees and costs, and **DISMISSES** this matter from the court's docket.

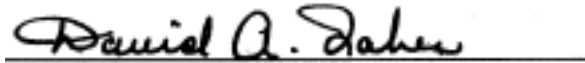
Additionally, the court has considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th

Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court DENIES a certificate of appealability.

The Clerk is further directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

**IT IS SO ORDERED** this 9th day of September, 2015.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Senior United States District Judge